

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

Inventor:	Stephens, <i>et al.</i>	Docket No.:	10079.0100
Serial No.:	09/504,939	Examiner:	Daniel S. Felten
Filing Date:	February 16, 2000	Art Unit:	3696
TITLE:	SYSTEM AND METHOD FOR CREATING, DISTRIBUTING AND MANAGING ARTIFICIAL AGENTS		

**PETITION UNDER 37 C.F.R § 1.181 TO THE DIRECTOR SEEKING
SUPERVISORY REVIEW OF A NOTIFICATION ON NON-COMPLIANT
BRIEF**

Mail Stop: Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Director:

This petition is submitted in response to the Notification of Non-Compliant Amendment mailed August 31, 2009 for the captioned patent application.

Remarks begin on page 2 of this paper.

REMARKS

Statement of Facts

An Appeal Brief under 37 C.F.R. § 41.37 appealing the final decision of the primary examiner dated February 25, 2008 was originally submitted on February 25, 2009. A notice of Non-Compliant Appeal Brief was mailed on May 22, 2009 indicating that the brief is not in compliance with 37 C.F.R. § 41.37(c)(1)(v). A corrected appeal brief was submitted on June 2, 2009 in accordance with 37 C.F.R. § 41.37(d) and MPEP § 1205.03(B). A second notice of Non-Compliant Appeal Brief was subsequently mailed on August 31, 2009 once again indicating the brief was not in compliance with 37 C.F.R. § 41.37(c)(1)(v).

In accordance with the rules of practice before the Board of Patent Appeals and Interferences no petition fee is required for a petition seeking supervisory review nor is there a reference under the rules to an applicable fee in this instance. 37 C.F.R. §§ 1.181 and 41.3(c).

Point to be Reviewed

The Notice of Non-compliant Appeal Brief asserts that “[n]o drawing reference characters accompany the drawings as required under 37 C.F.R. 41.37(c)(1)(v).” (*See* Exhibit A). The appellant submits that the previously submitted corrected appeal brief fulfilled the requirements to properly reference the drawing reference characters.

Argument in Support of Petition

37 C.F.R. § 41.37(c)(1)(v) states that the explanation of the subject matter “shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.” Accompanying the appellant’s corrected appeal brief submitted June 2, 2009, the appellant remarked that each figure listed in the Summary of Claimed

Subject Matter is either a block diagram with the claimed element clearly displayed **or** the does not contain a reference character which can be referenced. For example, the provided description for independent claim 24 recites:

[A] consulting system [page 6, lines 2-3] which comprises a means for distributing artificial agents [page 5, lines 10-13 and lines 18-20; page 6, lines 20-25; page 39, lines 11-28; and page 40, lines 1-12] and an agent factory [page 16, lines 4-5; page 22, lines 22-25; page 23, lines 1-28; page 24, lines 1-5; and **Figure 1, item 115**] that monitors recommendations provided by a first artificial agent [page 16, lines 23-27] and comprises a management system [page 16, lines 11-12; and **Figure 1, item 125**] having a graphical user interface configured to display the recommendations [page 16, lines 11-12; **Figure 1, item 130**; and **Figs. 5-11**] and determine whether the first artificial agent is performing below a predetermined predictability value [page 26, lines 15-28; page 27, lines 1-25; and **Figure 4**] and when the first artificial agent is below the predetermined predictability value, the first artificial agent is retired [page 41, lines 7-10 and lines 26-30; and **Figure 13, item 1330**] and a second artificial agent is made available for distribution [page 39, lines 3-7].

(See Exhibit B for a complete listing of the summary of claimed subject matter from Section V of the Appeal Brief). Clearly, in the case of Figures 1 and 13 the reference characters are provided. (See Exhibit C for a complete listing of figures contained in the application). In the case of Figures 4-12, the figures do not contain reference characters. *Id.* It is therefore impossible for the appellant to reference something that does not exist.

The appellant submits that the examiner may be misinterpreting the rules specifying the content of an appeal brief. For example, if the basis for notice of non-compliance is due to the fact that the Figures 3-12 do not contain reference characters, the appellant submits that this is not a valid reason to hold an appeal brief non-compliant under the rules. If the examiner takes issue with the drawings as submitted, the appellant submits that this is an issue which should have been brought up during prosecution and is not a proper basis for finding an appeal brief non-compliant under 37 C.F.R. § 41.37(c)(1)(v).

37 C.F.R. § 41.37 does not require that a drawing include a reference character or that a drawing should be amended to include reference characters simply for the sake of

submitting an appeal brief. Furthermore, the appellant submits that reference characters in drawings are only necessary when required to properly understand the figure in context with the written description. For example, referring to Figure 4 of the application, the appellant submits that reference characters are not required to understand the figure since it is an example of how certain types of information may be displayed to a user. (See Exhibit C). Figures 1 and 13 on the other hand depict a block diagram and a flow chart and appropriately contain reference characters to facilitate understanding of each element and/or process step. *Id.*

Action Requested by Appellant

The appellant submits that it is improper to base a finding of non-compliance on a requirement that is either not applicable to the present situation or a requirement which simply does not exist within the rules and procedures set forth by the U.S. Patent and Trademark Office. The appellant therefore respectfully requests that the Notice of Non-compliant Appeal Brief be found improper and that the Appeal Brief be found in compliance with the requirements of 37 C.F.R. § 41.37. The appellant further requests that the Appeal Brief be forwarded to the Board of Patent Appeals and Interferences for proper review in accordance with MPEP § 1200 and 37 C.F.R § 41.

CONCLUSION

The appellant respectfully submits that the Notice of Non-Compliant Appeal Brief has been issued in error, submission of a corrected appeal brief is not required, and further that the Appeal Brief, in its current form, is in compliance with each provision of 37 C.F.R. § 41.37. Please contact the undersigned attorney with any questions or comments.

Respectfully submitted,

Date: 30 SEP 09



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